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In re Application of	:	OFFICE OF PETITIONS
Robert A. Holzl et al	:	
Application No. 10/035,683	:	DECISION ON PETITION
Filed: November 1, 2001	:	UNDER 37 CFR 1.78(a)(6)
Attorney Docket No. 20451.12	:	

This is a decision on the renewed petition under 37 CFR 1.78(a)(6), filed June 24, 2002, to accept an unintentionally delayed claim under 35 USC 119(e) for the benefit of a prior filed provisional application.

The petition is **Granted**.

A petition under 37 CFR 1.78(a)(6) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after expiration of the period specified in 37 CFR 1.78(a)(5) and must be filed during the pendency of the nonprovisional application. In addition, the petition must be accompanied by:

- (1) the surcharge set forth in 37 CFR 1.17(t);
- (2) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(5) and the date the claim was filed was unintentional; and
- (3) the reference to the prior filed provisional application supplied in an application data sheet (ADS)(37 CFR 1.76) or as an amendment in the first sentence of the specification following the title. *See* 35 USC 119(e) and 37 CFR 1.78(a)(5). The Commissioner may require additional information where there is a question whether the delay was unintentional.

The instant pending nonprovisional application was filed on November 1, 2001, within twelve months of the filing date of the prior provisional application, Application No. 60/245,248, which was filed on November 2, 2000, and for which priority is claimed. A reference to the prior provisional application has been included in an amendment to the first sentence of the specification following the title.

The instant nonprovisional application was filed after November 29, 2000, and the claim for priority herein is submitted after expiration of the period specified in 37 CFR 1.78(a)(5). Also, the reference to the prior filed provisional application was submitted during the pendency of the nonprovisional application for which the benefit is sought. See 35 USC 119(e). Accordingly, having found that the instant petition satisfies the conditions of 37 CFR 1.78(a)(6) for acceptance of an unintentionally delayed claim for priority under 35 USC 119(e), the petition to accept an unintentionally delayed claim of benefit to prior filed provisional Application No. 60/245,248 is granted as of the date of filing the petition.

A corrected Filing Receipt, which includes the priority claim to the prior-filed provisional application, accompanies this decision on petition.

Any inquiries concerning this decision may be directed to Karen Creasy at (703) 305-8859.

The application is being forwarded to Technology Center AU 1742 for processing the amendment filed June 24, 2002 and for consideration by the examiner of the claim under 35 U.S.C. § 119(e) and 37 CFR 1.78(a)(5) for the benefit of the prior provisional application, Application No. 60/245,248, filed on November 2, 2000.



Frances Hicks
Lead Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

ATTACHMENT: Corrected Filing Receipt